

October 10, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the use, possession, and sale of marijuana (A.G. File No. 11-0039).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medical purposes under state law. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the U.S. Department of Justice's (DOJ's) current policy (announced in a June 29, 2011 memo from the department to its attorneys) is to not prosecute individual marijuana patients and caregivers who act in compliance with state medical marijuana laws. However, the department stated that it would continue to prosecute "commercial" medical marijuana activities. Moreover, in an earlier October 13, 2010 letter to the U.S. Drug Enforcement Agency, the U.S. Attorney General stated that the U.S. DOJ would continue to enforce federal laws prohibiting marijuana activities related to recreational use, even if such activities are permitted under state law.

Proposal

This measure changes state law to (1) legalize the possession, cultivation, and sale of marijuana by individuals age 21 or older, and (2) apply certain existing taxes and regulations regarding the production and sale of wine to marijuana. Despite these changes to state law, activities related to the use of marijuana would continue to be prohibited under federal law. These federal prohibitions could still be enforced by federal agencies.

State Legalization of Marijuana-Related Activities. Under the measure, persons age 21 or older could legally possess, sell, transport, process, and cultivate marijuana under state law. It also removes references to marijuana from statutes that regulate controlled substances. However, as discussed further below, the production and cultivation of specified amounts of marijuana for commercial purposes would be subject to regulation by the state and local governments. Although the measure would generally legalize marijuana, it would remain unlawful under this measure for individuals to operate a motor vehicle while under the impairment of marijuana or to smoke marijuana in public non-smoking areas. The measure also states that it does not repeal or modify any existing medical marijuana provisions authorized by Proposition 215.

The measure directs state and local officials and employees not to cooperate with the federal government in the eradication of marijuana or the seizure or forfeiture of property as part of marijuana enforcement efforts. In addition, it directs the state Attorney General and the state Department of Public Health to petition the Congress, the U.S. Department of Health and Human Services, and other federal agencies within 30 days of its enactment to remove marijuana from its current classification as a Schedule I drug under the federal Controlled Substances Act. If the Congress were to grant this petition, marijuana would no longer be a controlled substance under federal law.

Regulation and Taxation of Commercial Marijuana Activities. The measure would allow commercial marijuana production and sales, including the establishment of marijuana farming and commercial establishments that served or sold marijuana, subject to certain limitations. Specifically, under the measure, the cultivation and production of more than six outdoor marijuana plants or 12 indoor plants per adult per year would be subject to regulations established by the Department of Alcohol Beverage Control (ABC). The measure directs ABC to adopt regulations and procedures for the commercial marijuana industry by February 1, 2013 that are based on existing regulations for the farming, distribution, retail sale, and wholesale transactions of agricultural crops and products and modeled after those imposed on the wine industry. According to the measure, if ABC does not adopt such regulations by that date, the department shall use the existing regulations for wine and beer by replacing the words wine, beer, and alcohol with marijuana. In addition, the measure states that existing state taxes similar to those for the wine industry would be applied to marijuana. However, no regulations, taxes, or fees could be imposed for marijuana which were more severe or restrictive than those for the wine industry.

It is not entirely clear how these provisions would be implemented if the measure were adopted. For example, the specific taxes on marijuana would have to be determined by the Legislature. The most likely outcome is that various existing state and local taxes now applied to the wine industry in California would be applied to commercial marijuana activities. For

example, companies that grew and sold marijuana would likely have to pay taxes on their business profits, and sales of marijuana would probably be subject to state and local sales and use taxes. It is less clear whether an excise tax—such as the 20 cents per gallon levy now imposed on wine paid by manufacturers, wine growers, and importers—would apply to marijuana, and, if so, at what rate.

Authorization of Fines. This measure changes the penalties for various marijuana-related offenses as follows:

- ***Possession.*** Under current law, it is a misdemeanor crime punishable by up to six months in jail, up to a \$500 fine, or both, for any person to possess more than one ounce of marijuana. Currently, it is also an infraction punishable by a fine of up to \$100 for any person to possess one ounce or less of marijuana. As noted earlier, this measure would make it legal for a person age 21 or older to possess marijuana. However, under the measure, it would be an infraction punishable by a fine of up to \$2,500 for persons under age 21 to possess more than one ounce of marijuana and an infraction punishable by a fine of up to \$100 for persons under age 21 possessing one ounce or less of marijuana.
- ***Sale and Distribution.*** Under current law, selling marijuana is a felony subject to imprisonment in jail or prison for a period of two to four years. This measure would make it legal for persons age 21 or older to sell marijuana. However, the measure provides that the sale of marijuana by or to any individual under 21 years of age would be subject to a fine of up to \$2,500. The measure also specifies that distribution of marijuana by or to persons under age 21 is subject to this same penalty. This would likewise be the penalty for any sale of marijuana (including sales involving only adults) or commercial activity related to marijuana if it was not done in accordance with state regulation of these activities.
- ***Other Marijuana-Related Activities.*** Under current law, it is a felony subject to two to four years imprisonment in prison or jail to cultivate, gift, store, share, or transport marijuana. This measure makes it legal for persons age 21 or older to engage in such marijuana related activities, but would make it an infraction subject to a fine of up to \$2,500 for individuals under age 21 to cultivate any amount of marijuana. This would likewise be the penalty for persons under age 21 for possessing, gifting, storing, sharing, or transporting more than one ounce of marijuana.

Fiscal Effects

As noted above, it is unclear how some of the provisions in the measure regarding marijuana regulation and taxation would be implemented. In addition, the U.S. DOJ's announcement that it would continue to enforce federal prohibitions on non-medical marijuana-related activities could have the effect of impeding the activities permitted by this measure under state law. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in State and Local Correctional Costs. The measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under county probation or state parole supervision. These savings could reach several tens of millions of dollars annually. County jail beds that would no longer be needed for marijuana offenders might be used for other criminals who are now being released early because of a lack of jail space.

Reduction in Court and Law Enforcement Costs. The measure would result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the court system. The state and local governments may decide to redirect existing resources to other law enforcement and court activities.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance abuse treatment and other medical services. This measure could also potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a patient registry that identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes. In addition, the measure could result in additional costs in the low tens of millions of dollars annually for ABC to establish and enforce regulations for the commercial marijuana industry. However, it is likely that these costs would be offset by licensing fees levied on marijuana businesses.

Effects on State and Local Revenues. The state and local governments would receive additional revenues from taxes and fees from marijuana-related activities allowed under this measure. For instance, state and local governments would receive increased sales tax revenues from the sale of marijuana. In addition, businesses and individuals producing and selling marijuana would pay individual and business taxes. To the extent that this business activity pulled in spending from persons in other states, the measure also would result in a net increase in taxable economic activity in the state. However, the potential new revenues from marijuana-related economic activity could partially be offset by declines in other economic activity as consumers spend less on other consumer products and/or invest less. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces its laws against marijuana in California. To the extent that a commercial marijuana industry further develops in the state as a result of this measure, however, our best estimate is that the state and local governments could eventually collect hundreds of millions of dollars annually in net additional revenues.

Shift in Sources of Fine Revenue. The measure would result in an unknown reduction in state and local revenues due to the elimination of fines established in current law for marijuana criminal offenders. However, the loss of these fine revenues could be wholly or partially offset by the generation of new fines imposed on violators of certain provisions of this measure.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- The fiscal effects of this measure are subject to considerable uncertainty depending on: (1) the extent to which the federal government continues to enforce federal marijuana laws and (2) the specific taxes applied to marijuana.
- Savings of potentially several tens of millions of dollars annually to state and local governments on the costs of incarcerating and supervising certain marijuana offenders.
- Potentially hundreds of millions of dollars in net additional tax revenues related to the production and sale of marijuana products.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance